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Arraignments

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

18 Cr. 676 JSR

5 MAHAMADOU JABBI, MALAMIN JAGANA
6 and ABOUBARCARI WAGUE,

7 Defendants.

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8
9 October 3, 2018
2:55 p.m.

10 Before:

11 HON. JED S. RAKOFF,

12 District Judge

13
14 APPEARANCES

15
16 GEOFFREY S. BERMAN,
17 United States Attorney for the
Southern District of New York
18 KIERSTEN ANN FLETCHER,
Assistant United States Attorney

19 JUSTINE ALETA HARRIS,
20 ALEGRA NOONAN,
Attorneys for defendant Jabbi

21 MARK GUTMAN,
22 Attorney for defendant Jagana

23 SEAN MICHAEL MAHER,
Attorney for defendant Wague

24 Also Present:
25 CHRISTOPHER NIEVES, Special Agent DSI

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1 (In open Court)

2 (Case called)

3 THE COURT: Good afternoon. All right.

4 I think the first matter of business is arraignment.

5 Let me take each defendant and each defense counsel
6 separately, starting with counsel for Mr. Jabbi. Have you gone
7 over and discussed with your client the indictment?

8 MS. HARRIS: I have, your Honor.

9 THE COURT: Does he wish it read again here in open
10 court or does he waive the public reading?

11 MS. HARRIS: He waives the public reading, your Honor.

12 THE COURT: Does he wish a plea of not guilty to be
13 entered?

14 MS. HARRIS: Yes, to all counts, your Honor. He is
15 charged in 1, 2, 5, 6 and 7.

16 THE COURT: A plea of not guilty will be entered.

17 Now turning to Mr. Wague?

18 MR. MAHER: Wague.

19 THE COURT: And have you gone over the indictment with
20 your client?

21 MR. MAHER: Yes.

22 THE COURT: Do you wish it read here in open court or
23 do you waive the public reading?

24 MR. MAHER: We waive.

25 THE COURT: Do you want a plea of not guilty entered

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1 at this time with respect to all of the counts he is charged
2 with?

3 MR. MAHER: Yes, your Honor.

4 THE COURT: That plea of not guilty will be entered.

5 MR. MAHER: Thank you.

6 THE COURT: Is it pronounced Jagana?

7 MR. GUTMAN: Yes.

8 THE COURT: Have you gone over with Mr. Jagana the
9 indictment in this case?

10 MR. GUTMAN: Yes, your Honor.

11 THE COURT: Do you want it read again here in open
12 court or do you waive the public reading?

13 MR. GUTMAN: We waive the public reading.

14 THE COURT: Do you wish a plea of not guilty to be
15 entered at this time with respect to all the counts he is
16 charged with?

17 MR. GUTMAN: Yes.

18 THE COURT: A plea of not guilty will be entered.

19 How long does the government want for completion of
20 discovery?

21 MS. FLETCHER: The government anticipates being able
22 to produce discovery by the end of next week.

23 THE COURT: That is fine. So that would be October
24 12th. How long do counsel want for the making of any motions?

25 (Off-the-record discussion)

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1 THE COURT: I usually give two weeks.

2 MS. HARRIS: Your Honor, our preference would be for
3 longer, but, of course, we are familiar with the court's
4 preference in this regard. We do note a couple of factors.

5 First of all, the clients here are release on bond. I
6 would note --

7 THE COURT: That makes your job so much easier?

8 MS. HARRIS: It does, your Honor, though in terms of
9 protecting what is in the interests of the defense, there are
10 issues with respect to Mr. Jabbi.

11 For example, his pretrial officer had broached the
12 subject of him participating in the Young Adult Offender
13 Program. I also was not the attorney of record at the time of
14 his arrest and initial presentment, your Honor. I was assigned
15 because of a conflict with the Federal Defenders, so there is a
16 little bit of lag time. It wasn't much because of those issues
17 and because that is a program that generally, if he was
18 admitted, takes time to figure out, first of all, whether he
19 could be admitted.

20 Then if he is admitted, there is a longer schedule
21 contemplated, of course, that requires the buy-in of all the
22 parties. I am not making any presumption what will happen, but
23 I would like a little bit of time just on behalf of Mr. Jabbi
24 to build that into the schedule so that we're not focused on
25 motions and decisions about trial or guilty plea while we're

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1 also trying to do that. If the court could indulge, perhaps we
2 would ask for 60 days, but maybe a month or six weeks to do
3 that. It is an ask with --

4 THE COURT: I am readying the smelling salts if you
5 had said 60 days. I hear what you're saying. This is not like
6 the most complicated case ever to be filed by the U.S.
7 Attorney's Office.

8 I assume discovery is fairly modest, yes?

9 MS. FLETCHER: Yes, your Honor, the discovery is not
10 that voluminous, with a couple of caveats. The government
11 expects to produce in discovery passport applications, and
12 those applications are not solely related to the defendants who
13 are charged, but to other members of the scheme, and so there
14 are slightly more pages of paper than may appear from the
15 complaint.

16 THE COURT: In total, what is the page number? What
17 is the totality of discovery, approximately, ballpark?

18 MS. FLETCHER: Can I have just a moment, your Honor?

19 THE COURT: Yes.

20 (Off-the-record discussion)

21 MS. FLETCHER: Your Honor, I would expect less than a
22 thousand pages of records.

23 THE COURT: So it is not that voluminous as cases go,
24 but let me hear -- yes, sir?

25 MR. MAHER: There is just one other issue with that,

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1 your Honor. I don't know at this point who potential the
2 government witnesses are or members unindicted of any
3 conspiracy, but if there aren't any important witnesses or you
4 could say characters involved in this case who have Alien Files
5 A filed, and the government has not obtained those yet, in my
6 experience, that can take a while even for the U.S. Attorney's
7 Office to obtain. Those are very important in this case. .

8 THE COURT: Well, they know that if they have any
9 difficulty obtaining files, they should jointly call me with
10 counsel and, if necessary, we'll send out the U.S. Marshals to
11 grab those files. I have never actually had to do that, but
12 that is only because I've never had a problem after such a call
13 in getting deadlines met.

14 MS. FLETCHER: Your Honor?

15 THE COURT: Yes.

16 MS. FLETCHER: I may be able to address that issue. I
17 understand from Agent Nieves there are five or six A files that
18 could be relevant to the broader conspiracy. The agent has
19 those files certified already, so I don't anticipate that
20 creating --

21 THE COURT: That is great. That is terrific. All
22 right. Well, I will in a moment of weakness give you four
23 weeks. Do not come back and ask for more. It will not be
24 given. So that is October -- sorry -- the government's
25 discovery was to be completed on the 12th, so that's November

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1 9th, right?

2 THE CLERK: Yes.

3 THE COURT: Okay. And we will have a further
4 conference. Let's look at November 12th.

5 THE CLERK: That is Veterans Day.

6 THE COURT: Veterans Day? Everyone would love to come
7 in on Veterans Day, but let's look at November 13th.

8 THE CLERK: November 13th is a trial day for you,
9 maybe two trials, and it is a Columbia night.

10 THE COURT: So we have plenty of time. Yes, sir?

11 MS. FLETCHER: Your Honor, I am not sure what your
12 Honor's practice is with having AUSAs stub in. I am scheduled
13 to begin a trial on November 13th. I could be present --

14 THE COURT: What about maybe cutting one day off your
15 adversary, so their papers will be due November 8th instead of
16 November 9th. Would November 9th be better for you?

17 MS. FLETCHER: For me, it would, yes, your Honor.

18 THE COURT: Do we have anything on November 9th?

19 THE CLERK: Just a trial.

20 THE COURT: So why don't we say 3:30 on November 9th
21 for the conference, and the papers from the defense are due
22 November 8th. At that conference, if motions have been made
23 that can be dealt with orally, they will be. If motions are
24 made that require written response, we'll set a date then for
25 the written response. In any event, we'll set the trial date

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1 at that time.

2 So pursuant to Section 3161 of Title 18, I will
3 exclude from calculations of the Speedy Trial Act all time
4 between now and November 9th, finding such time is necessary to
5 complete discovery and draft motions and that for those and
6 other reasons, the best interests of justice in excluding such
7 time substantially outweighs the interests of the public and
8 the defendants in a speedy trial, although anyone in my court
9 will get a speedy trial in any event.

10 Is there anything else we need take up today?

11 MS. FLETCHER: Nothing from the government.

12 MS. HARRIS: Nothing further.

13 MR. MAHER: No.

14 MR. GUTMAN: Your Honor, Mr. Jagana has been unable to
15 find a surety to satisfy the financial requirements of the
16 bond. We would ask the court if you would consider allowing
17 two sureties for moral suasion purposes as opposed to financial
18 purposes. He does have two close cousins who are willing to do
19 that for him, but he has gone through many friends and family,
20 and no one is able to meet the financial requirements of his
21 bond at the moment.

22 THE COURT: What is the government's view?

23 MS. FLETCHER: That is consistent with the
24 government's understanding. I informed Mr. Brill, counsel of
25 record, the government would agree to modify Mr. Jagana's bail

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1 conditions, substitute one financially person for two moral
2 suasion. The government ask the those co-signers be presented
3 to the government for interview.

4 THE COURT: That is agreeable to the court as well.

5 Of course, the government needs to make sure that the
6 surety meets the requirements, so he won't be released right
7 now, but he will be released once that is accomplished.

8 MS. FLETCHER: Your Honor, he is currently out on
9 bond.

10 THE COURT: He is out on bond? I thought -- maybe I
11 misunderstood -- I thought maybe one of the defendants were
12 detained. I'm glad to hear they're not. That is fine.

13 MR. GUTMAN: Thank your Honor.

14 MS. FLETCHER: Would your Honor set a deadline for the
15 time period?

16 THE COURT: Yes, I think two weeks.

17 MS. FLETCHER: That is fine for the government.

18 MR. GUTMAN: That should be fine.

19 THE COURT: Thanks very much.

20 (Court adjourned)
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